

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

LESTER JON RUSTON,)	
)	
Petitioner,)	
v.)	Civil Action
)	No. 10-3102-CV-S-RED-H
MARTY C. ANDERSON,)	
)	
Respondent.)	

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE

Petitioner, an inmate confined in the United States Medical Center for Federal Prisoners, petitions this Court for a writ of habeas corpus in which he complains about his underlying criminal charges. The petition has been referred to the undersigned for preliminary review under 28 U.S.C. § 636(b). Because petitioner's claims are not properly before this Court, it will be recommended that he be denied leave to proceed in forma pauperis.

As grounds for relief in habeas corpus, petitioner appears to be challenging his underlying criminal charges.

A review of the record indicates that petitioner's criminal case and commitment proceedings are currently pending in the Northern District of Texas and the Fifth Circuit Court of Appeals. The issues he attempts to raise in this district appear to be part of the matters raised regarding his criminal charges and commitment in the charging district. Therefore, it will be recommended that the petition in this case be dismissed without prejudice to petitioner's right to pursue claims, if any, that he may have after the issues raised herein have been resolved in the appropriate jurisdiction.

Because this Court lacks jurisdiction of petitioner's claims, it must be recommended that the petition for habeas corpus relief be dismissed without prejudice.

For the foregoing reasons, it is, pursuant to the governing law and in accordance with Local Rule 22 of the United States District Court for the Western District of Missouri,

RECOMMENDED that petitioner be denied leave to proceed in forma pauperis, and that the petition for a writ of habeas corpus be dismissed without prejudice.

/s/ James C. England
JAMES C. ENGLAND
United States Magistrate

Date: 3/29/10